

Take notice that the Department of Community Affairs is seeking public comment on the proposed Transfer of Development Rights Real Estate Market Analysis Rules (N.J.A.C. 5:86 et al), which set forth the required contents of the real estate market analysis pursuant to the State Transfer of Development Rights Act (N.J.S.A. 40:55D-148c). The Real Estate Market Analysis examines the relationship between the development rights anticipated to be generated in the sending zones and the capacity of the designated receiving zones to accommodate the necessary development. Said analysis is pivotal in examining the likelihood of success for a proposed transfer of development rights program. The rule proposal appeared in the July 18, 2005 New Jersey Register (37 N.J.R. 2592 through 37 N.J.R. 2586). The Department of Community Affairs will be accepting written comments for an additional 30-day period set to expire on December 2, 2005.

Submit written comments by December 2, 2005 to:

Maura K. McManimon, Executive Director, Office of Smart Growth
New Jersey Department of Community Affairs
101 South Broad Street, P.O. Box 204
Trenton, New Jersey 08625-0204
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All comments should be identified by the applicable N.J.A.C. citation, and comments related to the Summary description of a particular rule section should be included with comments on that section.

Please use the following format to the extent possible: (tab) citation (tab) Comment: (two spaces) organization name or individual name, followed immediately with the phrase 'believes that' and comment text.

For example, "5:86-1.4 Comment: ABC organization believes that the definition of 'TDR zoning' should be amended as follows." This format will enable the Department of Community Affairs to sort comments electronically.

All comments will be directed to the Office of Smart Growth, Department of Community Affairs. The Office of Smart Growth will accept comments (1) by e-mail at osgmail@dca.state.nj.us; or (2) as two (2) hard copies, with a PC-formatted diskette, preferably in Microsoft Word. The Department of Community Affairs will accept faxed copies as well, but request that e-mailed versions, or hard copies and diskette follow. The Department of Community Affairs and the Office of Smart Growth will not accept comments by phone.

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The agency proposal follows:

Summary

The Department of Community Affairs is proposing new rules in response to the recent enactment of the State Transfer of Development Rights Act, N.J.S.A. 40:55D-137 et seq. The Act enables all municipalities in the State to adopt transfer of development rights (TDR) ordinances and sets forth the procedure and standards for doing so. The Act mandated that the Department of Community Affairs promulgate rules to set forth the required contents of the real estate market analysis (N.J.S.A. 40:55D-148), which examines the relationship between the development rights anticipated to be generated in the sending zones and the capacity of the designated receiving zones to accommodate the necessary development.

Subchapter 1, General Provisions, is being proposed to set forth general information including the scope, purpose and applicability of the rules, as well as definitions for this chapter. N.J.A.C. 5:86-1.1 describes the scope and purpose of the rule as effectuating the real estate market analysis requirement of the Act (N.J.S.A. 40:55D-137 et seq.), defining the purpose of a real estate market analysis to accurately depict the relationship between

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receiving and sending zones, and specifies that the real estate market analysis be performed in the early stages of the planning process to ensure the proposed TDR program's viability. N.J.A.C. 5:86-1.2 sets forth that all municipal entities are governed by this chapter, except those in Burlington County choosing to implement TDR under the provisions set forth in N.J.S.A. 40:55D-113 et seq. pursuant to N.J.S.A. 40:55D-163. Finally, N.J.A.C. 5:85-1.3 defines relevant TDR terms as they relate to the real estate market analysis.

Proposed Subchapter 2, Market Analysis Report, establishes the required contents of the real estate market analysis report, and the process for analyzing the sending and receiving zones. N.J.A.C. 5:86-2.1 explains that a municipality is authorized to conclude a real estate market analysis only after a draft development transfer element has been presented at a planning board meeting and made available for public comment for no less than 10 days. N.J.A.C. 5:86-2.2 defines the qualifications of the analyst as a real estate consultant or land economist.

Proposed N.J.A.C. 5:86-2.3 discusses the required content of the real estate market analysis report. Flexibility in performing the analysis is afforded because of the

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variability in type, purpose and scope of TDR programs. While the report may be broader than the outlined requirements, it must at least include a summary, general information, analysis of both receiving and sending zones, and a discussion of the viability of the TDR program.

N.J.A.C. 5:86-2.4 fully describes the summary information required in N.J.A.C. 5:86-2.3(a)1. This section of the report shall include a letter of transmittal including the expected development right and credit value range based on current market conditions. It shall also include a summary of salient facts and conclusions the analyst deems important.

N.J.A.C. 5:86-2.5 fully describes the general information required in N.J.A.C. 5:86-2.3(a)2.

This section of the report shall include the purpose of the market analysis and a statement of the rights being valued. In addition, it shall include definitions of legal and technical terms used in the report, as well as any assumptions and limiting conditions considered in the report. The report shall identify all subject sending and receiving zones by municipal tax map block and lot or other means, provide a map of same, and briefly discuss current

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land uses within the sending and receiving zones. Zoning assessment information shall also be included. Lastly, information detailing community and neighborhood data, including, but not limited to, the character of the community, land use trends, degree of development pressure in the area, and any other information that may affect the market value.

N.J.A.C. 5:86-2.6 fully describes the receiving zone analysis information required in N.J.A.C. 5:86-2.3(a)3. This section of the report shall include consideration of the receiving zone's highest and best use based on physical characteristics as provided in the draft Development Transfer Element under the provisions set forth in N.J.S.A. 40:55D-141. The report shall include information detailing any rejected, approved, or pending subdivision plans and the estimated acreage of environmentally constrained areas. It shall determine the maximum capacity that the market can bear in the receiving zone based on economic modeling. The analysis shall consider past, current and anticipated demand for real property at base zoning and TDR zoning, as well as population and growth estimates for the area.

N.J.A.C. 5:86-2.7 fully describes the sending zone analysis information required in

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N.J.A.C. 5:86-2.3(a)4. This section of the report shall include a range of values realistically attainable, and consideration of the sending zone's highest and best use based on physical characteristics as provided in the draft Development Transfer Element under the provisions set forth in N.J.S.A. 40:55D-141. The report shall include information detailing any rejected, approved, or pending subdivision plans and the estimated acreage of environmentally constrained areas. This section shall include expected sending zone property value ranges at base zoning and after the transferable development rights have been severed and the TDR deed restriction has been imposed.

N.J.A.C. 5:86-2.8 fully describes the viability analysis information required in N.J.A.C. 5:86-2.3(a)5. Proposed N.J.A.C. 5:86-2.8 outlines the procedures to determine the viability of the TDR program to accommodate sending zone development rights in the receiving zone. It shall make a per unit of development value conclusion, that takes into consideration cost factors such as infrastructure, redevelopment, affordable housing, and impact fees in the analysis. In addition, the value conclusion shall be used to determine whether the purchase of credits is economically feasible. The proposed rule requires a determination as to whether the receiving zone has capacity and whether market demand is sufficient to accommodate the number of TDR credits that will be generated. A

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determination as to whether the proposed transfer ratio will support both the sending and receiving zones is also required. The analysis must also consider the distribution of ownership and the equality of sending and receiving zone sizes to assure a fair market balance.

Proposed Subchapter 3, Review of Market Analysis Report, reiterates the requirement under the Act that municipalities hold a hearing on the market analysis prior to the meeting at which the development transfer ordinance receives its first reading. It further proposes that two paper copies and one electronic copy of the final report be sent to the Office of Smart Growth no later than 10 days after its completion and at least 15 days prior to the above planning board meeting. It also stipulates that the Office of Smart Growth (and Pinelands Commission, if applicable) receive notice of said meeting at least 15 days prior to its occurring. Lastly, the rule requires that there be a reasonable basis for concluding that the transfer system will be successful for the TDR program to be deemed viable, and requires that the municipality investigate alternative approaches if the market analysis does not find the program to be viable.

Proposed Subchapter 4, Real Estate Market Analysis in the Highlands, pertains to transfer

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programs within the Highlands preservation area. It stipulates that if the transfer program involves credits from the Highlands preservation area and is established before the Highlands Council creates a regional TDR program, then the initial value of the Highlands preservation area development rights shall be set considering Department of Environmental Protections rules in effect the day before the date of enactment of the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et al. If the transfer program involves credits from the Highlands preservation area and is established after the Highlands Council creates a regional TDR program, then the initial value of the Highlands preservation area development rights shall be the value set by the Council.

The Department of Community Affairs has provided for a 60-day public comment period on this notice for this rule proposal; therefore this rule is exempted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules will have a positive impact on a municipality's ability to preserve land and plan for compatible development. The statutory requirement to conduct

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a real estate market analysis could be a financial burden on some municipalities. The Act, however, provides for a planning assistance grant program that will help municipalities pay for the planning needed to implement a TDR program, including the real estate market analysis.

The proposed new rules will help municipalities ensure that the TDR program proposed in a municipality's master plan and ordinances is viable. A viable transfer program will have a positive impact on residents in the "receiving zone" (that is, areas designated for growth) where they will be able to enjoy a more traditional, pedestrian oriented style of neighborhood. A viable program will also have a positive impact on residents in the "sending zone," where land equity is maintained through the sale of development rights rather than realizing the loss typically associated with down-zoning. The entire community benefits from the potential increases in land values and positive quality of life that permanently preserved lands afford.

Economic Impact

The proposed new rules will economically benefit municipalities, as they enable a

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broader scope of planning activities. In addition, the municipality can receive planning assistance grants from the State TDR Bank to defray the planning costs. The grants will relieve municipalities of some of the financial burden of planning and will help them create ordinances that will ultimately save them money in services and infrastructure. As development potential is transferred, municipalities can realize savings in various ways. They will save money by not having to expand roads and construct other infrastructure to support development in non-growth areas. In addition, targeting development to growth areas gives them priority for attaining State capital and infrastructure funding.

Further, with a viable TDR ordinance, a municipality does not have to rely upon public funding sources to preserve land, as developers would purchase the development potential from the landowners in the “sending zones” (that is, the areas to be preserved) to construct houses in “receiving zones” (that is, areas designated for growth). Given that the transfer of development rights will result in restricted private land, there will be no public funds needed to manage the lands. In addition, the privately held lands continue to be assessed for local property taxes, although at a reduced value once the development rights are transferred from the sending zone property.

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While the work product related to the proposed new rules will cost local government governments money to produce if they determine to implement a TDR program, the New Jersey Department of Community Affairs contends that the overall process will ensure that the proposed TDR program is viable. Participation may require the commitment of staff and/or consultant resources; however, the level of effort and expenditures will vary from local government to local government. Variables such as the complexity of the project and available staff expertise (in-house or consultant) will affect the level of effort in a particular jurisdiction. Further, fiscal impacts experienced by local governments to produce the real estate market analysis are acceptable and warranted. The fiscal consequences of establishing a TDR program that appropriately targets growth and preserves critical resources are positive effects, and therefore, should be welcomed.

Federal Standards Statement

No Federal standards analysis is required because the proposed new rules are authorized by the State Transfer of Development Rights Act, N.J.S.A. 40:55D-137 et seq. and are not subject to any Federal requirements or standards.

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Jobs Impact

The proposed new rules are not expected to result in the generation or loss of jobs in the State.

Agriculture Industry Impact

The Department of Community Affairs anticipates that the proposed new rules will have a positive impact on the agriculture industry in New Jersey. The primary benefit will be the creation of another method of farmland preservation and enhancement of the agriculture industry in the State, whose future is dependent upon a stable land base. The rules create standards for the real estate market analysis that will ensure a viable transfer program. A viable program will help landowners to maintain equity. The landowners who sell development potential on farmland will have the opportunity to reinvest the proceeds from the sale in their farming operations. This will strengthen the viability of these farms, which cumulatively help to ensure the viability of New Jersey's agriculture industry.

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Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not impose reporting, recordkeeping or other compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules primarily impact municipalities. While entities that qualify as small businesses could ultimately be affected by adoption of a TDR ordinance, these proposed new rules do not impose any requirements on such entities.

Smart Growth Impact

The proposed new rules would achieve smart growth goals and implement the State Development and Redevelopment Plan. A main goal of the State Development and Redevelopment Plan is to target development in areas appropriate for growth, while also preserving the State's critical resources. Transfer of development rights achieves both of these objectives by providing a legal means and strategy to transfer development potential from resource areas to enable greater densities in growth areas. Furthermore, the Act requires that the municipal Master Plan, including the real estate market analysis and TDR planning documents, receive initial plan endorsement from the State Planning

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Commission. This requirement assures consistency with the State Development and Redevelopment Plan, and will lead to broader implementation of the Plan.

Full text of the proposed new rules follows:

CHAPTER 86

TRANSFER OF DEVELOPMENT RIGHTS REAL ESTATE MARKET ANALYSIS REPORT

SUBCHAPTER 1. GENERAL PROVISIONS

5:86-1.1 Scope and Purpose

(a) This subchapter sets forth rules for the preparation of the real estate market analysis required prior to the municipal adoption or significant amendment to a transfer of development rights ordinance, pursuant to the State Transfer of Development Rights Act, N.J.S.A. 40:55D-137 et seq.

(b) The rules are established to ensure that the required real estate market

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analysis portrays an accurate picture of the current and future land market, including the relationship between the development rights anticipated to be generated in a sending zone and the likelihood of their utilization in a receiving zone.

(c) The real estate market analysis is intended to confirm development rights and density calculations or otherwise alert a municipality to issues that may challenge a transfer of development rights project and to give a municipality the opportunity to address said issues at the early stages of the planning process.

(d) The real estate market analysis shall not be construed as a real estate appraisal, nor shall it be construed as establishing real estate market value.

5:86-1.2 Applicability

The rules contained in this chapter shall apply to any municipality establishing a transfer of development rights ordinance, as authorized under N.J.S.A 40:55D-137 et seq., except a municipality located in Burlington County choosing to implement a transferable development rights program pursuant to the provisions of N.J.S.A. 40:55D-113 et seq., pursuant to N.J.S.A 40:55D-163.

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5:86-1.3 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Base zoning” means either the zoning in place as of one year prior to the municipal enactment of a transfer of development rights ordinance or the zoning in place less than one year prior to the municipal enactment of the transfer of development rights ordinance provided that the zoning was adopted by the municipality for purposes of achieving consistency with a master plan that has received initial or advanced plan endorsement from the State Planning Commission pursuant to N.J.A.C. 5:85-7.1.

“Bonus density” means in a receiving zone either the amount by which development can exceed base zoning or the right to develop a use not permitted under the base zoning with the use of TDR credits.

“Development right” means an interest in land, less than fee simple absolute title, which enables the owner to develop the land for any purpose allowed by ordinance.

“Environmentally constrained area” means an area in which development is precluded or significantly limited by existing environmental statutes or regulations.

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“Market value restricted” means the value of a property based on its agricultural, environmental or historical resource and its other remaining inherent property rights, but does not allow the owner to develop the land for any other purpose except as expressly authorized by the transfer of development rights ordinance.

“Real estate market analysis” or “market analysis” means the report required pursuant to N.J.A.C. 5:86-2.

“Receiving zone” means an area or areas designated in a master plan and zoning ordinance, adopted pursuant to N.J.S.A. 40:55D-1 et seq., within which development may be increased, and which is otherwise consistent with the provisions of N.J.S.A 40:55D-145.

“Sending zone” means an area or areas in a master plan and zoning ordinance, adopted pursuant to N.J.S.A. 40:55D-1 et seq., within which development may be restricted and which is otherwise consistent with the provisions of N.J.S.A 40:55D-144.

“TDR credit” means the development right that can be utilized in a receiving zone to

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achieve the bonus density, the number of TDR credits is determined based on the transfer ratio and the number of transferable development rights being conveyed from the sending zone to the receiving zone .

“TDR zoning” means the zoning authorized in the receiving zone when TDR credits are utilized or in the sending zone once development credits have been relinquished.

“Transfer of Development Rights (TDR)” means the program.

“Transferable development right (TDR)” means a unit of development permitted by the base zoning which can be transferred from a property in the sending zone.

“Transfer ratio” means the number of transferable development rights that can be transferred from a sending zone property divided by the additional units of development that can be built on the receiving zone property through the use of TDR credits.

“Unit of development” means an additional right to build on a particular piece of property as determined by zoning ordinance; which may include, but is not limited to acre, square

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foot, residential unit, floor, height, etc.

SUBCHAPTER 2. MARKET ANALYSIS REPORT

5:86-2.1 Report required

(a) Prior to the adoption of or significant amendment to a development transfer ordinance, a real estate market analysis shall be prepared pursuant to this subchapter.

(b) The market analysis shall not be concluded until a draft development transfer plan element, meeting the requirements of N.J.S.A. 40:55D-140 and 141, has been presented at a planning board meeting and made available for public comment for no less than 10 days.

5:86-2.2 Qualifications of analyst

The market analysis shall be performed by a real estate consultant or land

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economist qualified to conduct economic analyses of the real estate market.

5:86-2.3 Required contents

(a) The market analysis report shall be specific to the proposed transfer of development rights program and shall include at least the following:

1. A summary;

2. General information;

3. An analysis of the receiving zone;

4. An analysis of the sending zone;

5. A discussion of the viability of the transfer of development rights program.

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(b) The requirements for each section of the market analysis report are described in N.J.A.C. 5:86-2.4 through 2.8.

5:86-2.4 Summary

(a) The summary section of the report shall contain at least the following:

1. A letter of transmittal that includes a statement of the value range of development rights expressed as an expected per credit and per unit of development. It shall be clearly stated that the value range is based on current market conditions and may not reflect future values, which can be affected by different market conditions; and

2. A summary of salient facts and important conclusions that shall include any other information that the analyst deems relevant.

5:86-2.5 General information

(a) The general information section of the market analysis report shall contain the

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following:

1. The purpose of the market analysis;
2. A statement of the rights being valued;
3. A section defining the legal and technical terms used in the report;
4. Any assumptions and limiting conditions;
5. A section identifying the subject sending and receiving zones by municipal tax map block and lot or other means, as well as the following:
 - i. A brief description of the subject zones and their current land uses; and
 - ii. A map depicting the sending and receiving zones.
6. Zoning assessment information; and

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7. Information detailing community and neighborhood data. This shall include, but not be limited to, the character of the community, land use trends, degree of development pressure in the area and any other information that may affect the market value of a TDR credit.

5:86-2.6 Receiving zone analysis

(a) The receiving zone analysis section of the market analysis report shall contain at least the following:

1. A determination of the receiving zone's highest and best use based on physical characteristics as provided in the draft development transfer element prepared pursuant to N.J.S.A. 40:55D-141, which shall include, but not be limited to:

i. Consideration of the receiving zone's topography, publicly or privately held open space or conservation easements, configuration, existing development patterns, transportation access, environmentally constrained areas and other appropriate

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characteristics; and

ii. All subdivision and site plan applications involving land in the receiving zone that were submitted to the appropriate land use board during the preceding five year period including any action taken thereon; and

2. A determination, based on economic modeling, as to whether the density and uses proposed in the receiving zone in the municipality's draft development transfer element can be supported by the market. Said determination shall take into consideration the past and current and future demand for real property at the zoning proposed for the receiving zone. The population and economic growth estimates and analysis incorporated in the municipality's draft development transfer element shall serve as the basis for the evaluation of future demand.

5:86-2.7 Sending zone analysis

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(a) The sending zone analysis section of the market analysis report shall contain at least the following:

1. A range of values realistically attainable at the given time and market conditions;

2. A determination of the sending zone's highest and best use based on the existing zoning of the property and its physical characteristics as provided in the draft development transfer element prepared pursuant to N.J.S.A. 40:55D-141, which shall include, but not be limited to;

i. Consideration of the sending zone's topography, publicly or privately held open space, configuration, existing development patterns, transportation access, environmentally constrained areas and other appropriate characteristics; and

ii. All subdivision and site plan applications involving land in the sending zone that were submitted to the appropriate land use board during the preceding five year

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period including any action taken thereon;

3. An analysis of land values in the sending zone at base zoning, given the physical characteristics set forth in (a)2 above, which shall include the following:

i. An evaluation of the past and current demand for real property at the base zoning; and

ii. A value conclusion that identifies a range of market values in the sending zone at base zoning and a discussion of how the conclusion was determined. The valuation shall be submitted on a per unit of development basis. The method of valuation shall be chosen at the analyst's discretion taking into consideration the base zoning and the characteristics of the property in the sending zone; and

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4. An analysis of what land values in the sending zone will be after the transferable development rights have been severed from a property and the TDR deed restriction has been imposed (market value restricted), which shall include the following:

i. An evaluation of the proposed TDR deed restrictions and their effect on the subject property, the subject property's adaptability for alternative uses that are not in conflict with the TDR deed restrictions and other items which are significant to the valuation of the property;

ii. Consideration of the sending zone's highest and best use as encumbered by the TDR deed restrictions provided in the draft development transfer element pursuant to N.J.S.A. 40:55D-141. The highest and best use analysis shall consider the following:

(1) The ability to establish the use consistent with applicable statutes, regulations and ordinances;

(2) The physical possibility of establishing the use;

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(3) The probability or likelihood of establishing the use; and

(4) The economic feasibility of establishing the use; and

iii. A value conclusion that identifies a range of market values of the lands in the sending zone once the required deed restriction is imposed and a discussion of how the conclusion was determined. The method of valuation shall be chosen at the analyst's discretion taking into consideration the characteristics of the property in the sending zone.

5:86-2.8 Viability of transfer of development rights program

(a) The analyst shall provide a value conclusion that identifies a range of raw land value a developer is willing to pay per unit of development in the receiving zone, and discusses how the conclusion was determined, including a demonstration that at least the following factors have been taken into consideration:

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1. The infrastructure needs in the proposed receiving zone identified in the Capital Improvement Program and Utility Service Plan developed pursuant to N.J.S.A. 40:55D-140 and the effect of said needs on development potential in the receiving zone. The discussion shall, at a minimum, include:

- i. The availability and need for infrastructure; and
- ii. The cost of providing needed infrastructure, including consideration of who will bear the cost of providing said infrastructure;

2. The costs associated with demolition, reconstruction or reuse of the existing built environment, if the receiving zone includes areas that could be redeveloped or brownfields;

3. The effect of including the number of affordable housing units proposed in the draft development transfer element in the receiving area; and

4. The costs associated with any impact fees that the municipality has established

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pursuant to statute in the receiving zone.

(b) An analysis of sending zone transferable development rights and receiving zone

TDR credit values shall include at least the following:

1. A range of values realistically attainable for the sale of transferable development rights at the given time and market conditions;
2. An estimated range of transferable development right values, which is derived from the difference between the base zoning market value and the market value restricted and reported as a per unit of development value. If available, past comparable sales may also be used in determining a range of transferable development right values;
3. An estimated range of TDR credit values based on either a conversion of the above per unit of development right value and the transfer ratio or past comparable sales of credits.
4. A discussion of the rights represented by the value conclusion and resultant

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changes in the highest and best use of the unrestricted versus the restricted property;

5. A discussion of the market conditions that would cause deviation from the estimated average TDR credit value; and

6. A summary of major points, which support the transferable development rights and TDR credit value ranges.

(c) Given the analyses of the receiving and sending zones conducted pursuant to N.J.A.C. 5:86-2.6 and 2.7, the report shall address the viability of the transfer of development rights program and shall include, but not be limited to, the following:

1. A determination as to whether the receiving zone can accommodate the number of TDR credits that will be generated based on the number of transferable development rights allocated in the sending zone and the transfer ratio;

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2. A determination as to whether existing or future market demand supports the proposed use and density in the receiving zone;

3. A determination as to whether the market in the receiving zone can bear a value for the TDR credits that will provide most sending zone property owners with the market value of the transferable development rights;

4. A determination as to whether the purchase of all of the TDR credits that will be generated from the sending zone is economically feasible given the market demand for the density and use proposed in the receiving zone;

5. A determination of whether the estimated range of transferable development right and TDR credit values are reasonably likely to result in participation by sending area landowners;

6. A determination as to whether the proposed transfer ratio supports both the sending and receiving zones, including;

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i. Consideration of what land value a TDR credit represents in the sending zone;

ii. Consideration of the varying uses and densities that can be achieved by using TDR credits in the receiving zone; and

iii. If the transfer of development rights program includes multiple municipalities, differences in land values among the participating municipalities shall be reflected in the proposed transfer ratio and shall be a consideration in the market analysis report; and

7. An analysis of whether the proposed sending and receiving zones are of an adequate size and distribution of ownership to prevent either zone from having an unfair market advantage.

(d) For a transfer of development rights program to be deemed viable, the results of the real estate market analysis shall ensure that there is a reasonable basis for concluding that the proposed system will succeed in transferring development potential

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from the sending zone to the receiving zone. If said conclusion cannot be made, the community shall investigate modifications to the transfer of development rights program so that will be successful in transferring development potential.

SUBCHAPTER 3. REVIEW OF MARKET ANALYSIS REPORT

5:86-3.1 Municipal obligation

Pursuant to N.J.S.A. 40:55D-148, the planning board shall hold a hearing on the real estate market analysis prior to the meeting at which the development transfer ordinance receives first reading.

5:86-3.2 Office of Smart Growth

(a) Two paper copies and one electronic copy of the final market analysis report shall be sent to the Office of Smart Growth no later than 10 days after its completion, and at least 15 days prior to planning board hearing required pursuant to N.J.S.A. 40:55D-148.

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(b) The Office of Smart Growth shall be officially notified of the planning board hearing required pursuant to N.J.S.A. 40:55D-148 at least 15 days prior to said hearing.

(c) The Office of Smart Growth's evaluation of the proposed TDR program will consider the findings of the real estate market analysis report, and the results of said analysis will be incorporated into its report to the State Planning Commission regarding the municipality's petition for plan endorsement pursuant to N.J.S.A. 40:55D-140(e) and N.J.A.C. 5:85-7.

5:86-3.3 Pinelands Commission

(a) For any municipality located in whole or in part in the Pinelands Area, two paper copies and one electronic copy of the final market analysis report shall be sent to the Pinelands Commission no later than 10 days after its completion, and at least 15 days prior to planning board hearing required pursuant to N.J.S.A. 40:55D-148.

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(b) For any municipality located in whole or in part in the Pinelands Area, the Pinelands Commission shall be officially notified of the planning board hearing required pursuant to N.J.S.A. 40:55D-148 at least 15 days prior to said hearing.

SUBCHAPTER 4. REAL ESTATE MARKET ANALYSIS IN THE HIGHLANDS

5:86-4.1 Applicability

(a) If the transfer program involves credits from the Highlands preservation area and is established prior to the Highlands Council creating a Regional TDR Program pursuant to N.J.S.A. 13:20-13, the initial value of the Highlands preservation area development rights shall be set considering the Department of Environmental Protection rules in effect the day before the date of enactment of the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq.

(b) If the transfer program involves TDR credits from the Highlands preservation area and is established after the Highlands Council creates a Regional TDR Program pursuant to N.J.S.A. 13:20-13, the initial value of the Highlands preservation area

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development rights shall be the value set by the Council.